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Salahuddin bin Shamsudin v Public Prosecutor

B HIGH COURT (KOTA BHARU) — CRIMINAL APPEAL NO DA-41S-28–10 OF 2024
MOHD ROSLI YUSOFF JC
19 MAY 2025

C *Criminal Procedure — Appeal — Appeal against conviction and sentence — Forfeiture of the motor lorry used for the conveyance of the animal — Offence under s 36(7) of the Animals Act — Whether the learned magistrate was right to order the forfeiture of the motor lorry which was used for the offence — Animals Act 1953 s 36(7)*

D

This was an appeal against the decision of the learned magistrate in respect of the order of forfeiture of a lorry which was used in the commission of an offence punishable under s 36(7) of the Animals Act 1953 ('the Act'), for the conveyance of 20,000 chicks with the said lorry without the written E authorisation and veterinary health certificate from the Director of Veterinary Services Kelantan. The accused pleaded guilty to the charge and sentenced to a fine of RM5,000 in default two months imprisonment sentence. The exhibits including the motor lorry, being the subject matter of the appeal were forfeited. The issue was whether the learned magistrate was right to order the forfeiture F of the motor lorry which was used for the offence.

Held, allowing the appeal; setting aside the order of the magistrate forfeiting the said motor lorry and the motor lorry ordered to be returned to the registered owner:

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(1) From the reading of proviso to s 74(2) of the Act, it was clear that before a magistrate may order any forfeiture of a 'conveyance' it was incumbent upon the magistrate to call upon the owner of the conveyance, if his name and whereabout was known, to show cause as to why an order of H forfeiture of the conveyance should not be made. From the meaning of the word 'conveyance' it could be concluded that the motor lorry was the conveyance in this case within the meaning of s 74(2) of the Act (see paras 16 & 18).

I (2) The court found that there was no record to show that prior to the making of the order of forfeiture, the learned magistrate had given a reasonable opportunity for the owner to appear and show cause why the forfeiture order should not be made. The learned magistrate might have easily obtained the information of the owner of the motor lorry through the appellant since the appellant had made it clear to the learned

magistrate and requested in his plea for mitigation for the motor lorry be released to him to enable him to return the same to the owner (see paras 20–21).

(3) The provision of s 74 of the Act did not require any person to be convicted first before the court can exercise the power of forfeiture. However, the proviso to s 74(2) makes it obligatory upon the court before exercising its power to forfeit the conveyance, to call upon the owner of the conveyance to show cause why it should not be forfeited. Having found that the learned magistrate had failed to give such opportunity to the owner of the said motor lorry, the court had allowed the appellant's appeal. The order of the magistrate forfeiting the said motor lorry was set aside and the said motor lorry shall be returned to the registered owner (see paras 28–30).

[Bahasa Malaysia summary

Ini merupakan suatu rayuan terhadap keputusan majistret terpelajar mengenai perintah pelucuthakan sebuah lori yang digunakan dalam perlakuan suatu kesalahan yang boleh dihukum di bawah s 36(7) Akta Binatang 1953 ('Akta tersebut'), yang digunakan untuk membawa 20,000 anak ayam dengan lori tersebut tanpa kebenaran bertulis dan sijil kesihatan veterinar daripada Pengarah Perkhidmatan Veterinar Kelantan. Tertuduh telah mengaku bersalah terhadap pertuduhan tersebut dan dihukum denda RM5,000 dan jika gagal, dua bulan pemenjaraan. Ekshibit-ekshibit termasuk lori tersebut, yang menjadi perkara pokok dalam rayuan ini, telah dilucuthakkan. Isunya ialah sama ada majistret terpelajar telah bertindak dengan betul dalam memerintahkan pelucuthakan lori tersebut yang digunakan untuk melakukan kesalahan.

Diputuskan, membenarkan rayuan; mengenepikan perintah lucuthak lori tersebut oleh majistret dan mengembalikan lori tersebut kepada pemilik berdaftar:

(1) Daripada bacaan peruntukan s 74(2) Akta tersebut, adalah jelas bahawa sebelum seorang majistret boleh memerintahkan pelucuthakan mana-mana 'alat pengangkutan' ('conveyance'), adalah menjadi kewajipan majistret untuk memanggil pemilik alat pengangkutan tersebut, jika nama dan keberadaannya diketahui, untuk menunjukkan sebab mengapa perintah pelucuthakan tidak sepatutnya dibuat. Daripada maksud perkataan 'conveyance', dapat disimpulkan bahawa lori tersebut adalah alat pengangkutan dalam kes ini sebagaimana yang diperuntukkan di bawah s 74(2) Akta tersebut (lihat perenggan 16 & 18).

(2) Mahkamah mendapati bahawa tiada rekod menunjukkan bahawa sebelum perintah pelucuthakan dibuat, majistret terpelajar telah

memberikan peluang yang munasabah kepada pemilik untuk hadir dan menunjukkan sebab mengapa perintah pelucuthakan tidak sepatutnya dibuat. Majistret terpelajar sepatutnya boleh dengan mudah mendapatkan maklumat mengenai pemilik lori tersebut melalui perayu memandangkan perayu telah menyatakan perkara tersebut kepada majistret dan memohon dalam mitigasinya agar lori tersebut dilepaskan kepadanya bagi membolehkan beliau memulangkannya kepada pemilik (lihat perenggan 20–21).

(3) Peruntukan s 74 Akta tersebut tidak memerlukan seseorang disabitkan dahulu sebelum mahkamah boleh melaksanakan kuasa pelucuthakan. Namun demikian, peruntukan s 74(2) mewajibkan mahkamah, sebelum melaksanakan kuasa untuk melucuthakkan alat pengangkutan tersebut, untuk memanggil pemilik alat pengangkutan itu menunjukkan sebab mengapa ianya tidak sepatutnya dilucuthakkan. Setelah mendapati bahawa majistret terpelajar telah gagal memberikan peluang sedemikian kepada pemilik lori tersebut, mahkamah ini telah membenarkan rayuan perayu. Perintah majistret yang melucuthakkan lori tersebut diketepikan dan lori tersebut hendaklah dikembalikan kepada pemilik berdaftar (lihat perenggan 28–30).]

Cases referred to

PP v Ong Ah Kau & Ors [1976] 2 MLJ 31; [1975] 1 MLRH 681 (distd)
R Valoo Maiyee a/l P Ramiah lwn Pendakwa Raya [2019] 7 MLJ 33; [2018] MLRHU 850, HC (distd)

Legislation referred to

Animals Act 1953 ss 36, 36(7), 74, 74(2)
Control of Supplies Act 1961 s 26
Lembaga Padi dan Beras Negara Act 1971 (repealed by the Control of Padi and Rice Act 1994) s 29(1)

Norizaidah bt Abdul Salam (Zaidah Abdul Salam & Co) for the appellant.
Nor Hamizah bt Ghazali (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Mohd Rosli Yusoff JC:

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the learned magistrate in respect of the order of forfeiture of a lorry CBR 9911 which was used in the commission of an offence punishable under s 36(7) of the Animals Act 1953 ('the Act').

FACTS OF THE CASE

[2] The appellant was charged as follows:

> Bahawa kamu pada 22/01/2024 lebih kurang jam 0030HRS di tepi bahu jalan Kilometer 227 menghala ke Ipoh, Perak. Didapati telah memindahkan 20,000 ekor anak ayam hidup menggunakan sebuah motolori no. pendaftaran CBR 9911 (warna: merah, jenis: Hicom Perkasa) tanpa Kebenaran Bertulis dan Sijil Kesihatan Veterinar daripada Pengarah Perkhidmatan Veterinar Negeri Kelantan atau mana-mana pihak berkuasa veterinar yang diberi kuasa olehnya.
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> Oleh yang demikian, kamu telah melakukan kesalahan di bawah Perenggan (2), Perintah Larangan Pemindahan Unggas (Jajahan Tanah Merah, Tumpat, Jeli dan Pasir Mas, [Kn.P.U26/2017]. Jika disabitkan dengan kesalahan kamu boleh di hukum denda tidak melebihi RM15,000.00 di bawah Subseksyen 36 (7) Akta yang sama.
>
> Hukuman:
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> Jika disabitkan dengan kesalahan boleh didenda tidak melebihi lima belas ribu ringgit (RM15,000.00).

[3] The appellant who was not represented by any defence counsel had pleaded guilty to the charge. The appellant then pleaded for mitigation as follows:

> OKS: Saya mohon maaf. Ini adalah merupakan kesalahan pertama dan juga terakhir yang akan saya lakukan. Saya pohon agar denda dikurangkan kerana saya perlu menanggung keluarga. Saya merupakan anak ke-6 daripada 11 orang adik beradik. Bujang dan perlu menjaga ibu bapa. Saya sekarang bekerja sebagai seorang nelayan dengan pendapatan yang tidak menentu sekitar RM1,000.00 sebulan. Saya pohon agar barang kes iaitu motorlori dikembalikan kepada saya untuk dipulangkan kepada pemilik asal.

[4] The prosecuting officer ('PO') then pleaded for aggravation as follows:

> PO: Pohon hukuman yang setimpal dikenakan ke atas OKS untuk dijadikan sebagai pengajaran kepada OKS dan masyarakat di luar. Adanya risiko penyebaran penyakit unggas yang berkaitan dengan penyakit influenza burung dan avian influenza sekiranya dibiarkan tanpa pemeriksaan. Saya pohon agar Mahkamah ini melucuthak barang-barang kes iaitu 20,000 ekor anak ayam dan motolori CBR 9911 untuk dijadikan sebagai hasil kerajaan di bawah s 74(1) Akta Binatang 1953.

[5] The learned magistrate after considering the facts of the case, relevant exhibits and upon hearing plea of mitigation and aggravation by both the appellant and the PO, passed the following sentence:

> Mah: OKS didapati bersalah terhadap pertuduhan.

A Hukuman denda RM5,000.00 gagal bayar 2 bulan penjara. Barang-barang kes dilucuthak dan dilupuskan oleh Jabatan Veterinar Kelantan setelah tamat tempoh rayuan.

B **[6]** 'Barang-barang kes' that were forfeited including a motor lorry bearing registration No CBR 9911 which is the subject matter of this appeal.

THE APPEAL

C **[7]** The sole issue raised by counsel for the appellant in this appeal is whether the learned magistrate was right to order the forfeiture of the conveyance, which is in this case, a motor lorry bearing Registration No CBR 9911.

D *Brief submission of the defence counsel*

[8] It was submitted by the learned counsel of the appellant that in order to forfeit a conveyance under s 74(2) of the Act, the owner of such conveyance must be given an opportunity to be heard and to show cause why such E forfeiture order should not be made.

[9] The counsel for the appellant submitted that the said motor lorry was not belong to the appellant but to one Haslina bt Mat Husin (NRIC No: 841029–03–5650) trading as Duanna Enterprise.

F **[10]** It was further submitted on behalf of the appellant that when the charge under s 36 of the Act was read and explained to the appellant, it was not read together with s 74 of the Act. Section 74 of the Act was only mentioned by the PO in his submission for aggravation.

G **[11]** It was also argued on behalf of the appellant that s 74 does not provide for a mandatory forfeiture. Forfeiture may only be ordered if there is further evidence and the court is satisfied with such evidence.

H *Brief submission of the DPP*

[12] The learned DPP in her submission states that the sentence passed by the learned magistrates was fair and not too high.

I **[13]** It was also argued that under s 74(2) of the Act, the magistrate has the discretion to order forfeiture of the goods seized if he was satisfied that the offence under the Act had been committed.

[14] Finally, the learned DPP contended that despite the fact that s 74 was not stated in the charge, not read and not explained to the appellant, the appellant knew that the court may order the forfeiture of the said motor lorry. That was why in his plea for mitigation, he pleaded that the motor lorry be released to him to be returned to the owner.

ANALYSIS AND FINDING OF THE COURT

[15] Since the central issue of this appeal is concerning the forfeiture of the said motor lorry under s 74(2) of the Act, it is imperative to state the whole provisions of s 74 of the Act as follows:

Section 74 Forfeiture

(1) Any animal or bird, or carcass, semen, fodder, litter, dung, or any product of animals or birds or any article or substance, conveyance or document that has been seized or any proceeds of a sale under this Act or any subsidiary legislation made under this Act shall be liable to forfeiture.

(2) Any order for the forfeiture or for the release of any animal or bird, or carcass, semen, fodder, litter, dung, or any product of animals or birds or any article or substance, conveyance or document that has been seized in exercise of any power conferred under this Act or any subsidiary legislation made under this Act or the proceeds of any sale under it shall be made by the court before which the prosecution with regard thereto has been held and an order for its forfeiture shall be made if it is proved to the satisfaction of the court that an offence against this Act has been committed and it was the subject matter of or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence Provided that no order of forfeiture shall be made in respect of a conveyance unless the owner, if his name and place of residence is known, shall have had an opportunity of appearing to show cause why such order should not be made.

(3) Any animal or bird, or carcass, semen, fodder, litter, dung, or any product of animals or birds or any article or substance, conveyance or document or the proceeds from any sale forfeited under this section shall be disposed of in accordance with the direction of the Magistrates.

[16] From the reading of proviso to s 74(2) of the Act, it is clear that before a magistrate may order any forfeiture of a 'conveyance' it is incumbent upon the magistrate to call upon the owner of the conveyance, if his name and whereabout is known, to show cause as to why an order of forfeiture of the conveyance should not be made.

[17] There are several meaning of the word 'conveyance' according to English dictionary, inter alia:

(a) the act of conveying; transmission; communication; and

A (b) a means of transporting, especially a vehicle as a bus, airplane, or automobile.

[18] From the meaning of the word 'conveyance' we may conclude that the motor lorry bearing Registration No CBR 9911 was the conveyance in this case
B within the meaning of s 74(2) of the Act.

[19] In this case, from the notes of evidence, apparently the learned magistrate upon being satisfied with the guilty plea of the appellant, proceeded to convict and sentenced the appellant and at once ordered the all the exhibits
C including the said motor lorry to be forfeited.

[20] There was no record to show that prior to the making of the order of forfeiture, the learned magistrate had given a reasonable opportunity for the owner to appear and show cause why the forfeiture order should not be made.
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[21] The learned magistrate might have easily obtained the information of the owner of the motor lorry thru the appellant since the appellant had made it clear to the learned magistrate and requested in his plea for mitigation for the
E motor lorry be released to him to enable him to return the same to the owner.

[22] The cases referred to by the learned counsel for the appellant ie the case of *R Valoo Maiyee a/l P Ramiah lwn Pendakwa Raya* [2019] 7 MLJ 33; [2018] MLRHU 850 and the case of *Public Prosecutor v Ong Ah Kau & Ors* [1976]
F 2 MLJ 31; [1975] 1 MLRH 681 though related to the discretionary power of the court to order forfeiture but not so much in point to the issue in this appeal as those cases dealt with a different provisions of law namely the provision of Lembaga Padi dan Beras Negara Act and Control of Supplies Act 1961 which provisions are not in pari materia with s 74(2) of the Act.

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[23] In the case of *R Valoo Maiyee a/p P Ramiah* the relevant provision of law dealt with was s 26 of the Control of Supplies Act 1961 that provides as follows:

> (1) Where any person is convicted of an offence against this Act the court may order the confiscation in whole or in part of:
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> ...

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[24] In that case, Abd Majid Tun Hamzah PK (as he then was) held as follows:

I > [22] Mahkamah mempunyai budi bicara sama ada hendak merampas atau memulangkan GPC itu kepada responden dan budibicara ini hendaklah dipertimbangkan secara 'judiciously' ...

[25] In the case of *Public Prosecutor v Ong Ah Kau & Ors* the relevant

provision of law dealt with was s 29(1) of the Lembaga Padi dan Beras Negara Act 1971 that provides as follows:

> (1) Where any person is convicted of an offence under this Act or under any regulation made thereunder the court may order the confiscation in the whole or in the part of:
>
> ...

[26] In that case, it was held by Syed Agil Barakbah J (as he then was) that the learned president construed the provision correctly that the power of the court to order confiscation of the rice is not mandatory but discretionary.

[27] In both cases referred to by the learned counsel of the appellant, the provisions of law are clear that if any person is convicted of an offence under those Act, then the court 'may' confiscate the goods seized subject to any further or other requirement.

[28] On the other hand, the provision of s 74 of the Act does not require any person the be convicted first before the court can exercise the power of forfeiture. However, the proviso to s 74(2) makes it obligatory upon the court before exercising its power to forfeit the conveyance, to call upon the owner of the conveyance to show cause why it should not be forfeited.

CONCLUSION

[29] Having found that it is obligatory upon the court under the proviso to s 74(2) of the Act to give an opportunity for the owner of the said motor lorry to appear before the court and show cause as to why the order of forfeiture should not be made in respect of the said motor lorry, and having found that the learned magistrate had failed to give such opportunity to the owner of the said motor lorry, this court had allowed the appellant's appeal.

[30] The order of the magistrate forfeiting the said motor lorry bearing Registration No CBR 9911 is set aside and the said motor lorry shall be returned to the registered owner.

Appeal allowed; order of the magistrate forfeiting the said motor lorry was set aside and motor lorry ordered to be returned to the registered owner.

Reported by Muhammad Azham Marwan